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TRANSMITTAL FORM

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	Application Number	10/743,365	
	Filing Date	December 22, 2003	
	First Named Inventor	Marc Muller	
	Art Unit	1626	
	Examiner Name	R. Shiao	
Total Number of Pages in This Submission	4	Attorney Docket Number	104610-49823 DIV (21296)

ENCLOSURES (Check all that apply)			
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Gibbons, Del Deo, Dolan, Griffinger & Vecchione		
Signature			
Printed name	William H. Epstein		
Date	July 20, 2005	Reg. No.	20,008

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PATENT
104610-49823 DIV (21296)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	:	
Muller et al.	:	
Serial No. :	10/743,365	: Art Unit : 1626
Filed :	December 22, 2003	: Examiner : R. Shiao
Title :	PROCESS FOR THE MANUFACTURE OF 3-AMINO- PYRROLIDINE DERIVATIVES	: : :

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action mailed July 8, 2005, having a one month shortened statutory period for reply which expires on August 8, 2005.

The outstanding Office action sets forth a Restriction Requirement. The invention is directed to a process of utilizing compounds containing a Markush Group where Y is -CH- or hydrogen. In accordance with this Restriction Requirement, Applicants elect the process of Group II, where, in the compounds used in the claimed process, Y is nitrogen, *i.e.*, claims 1 and 2. In accordance with the further requirement, Applicants elect the species of claim 2 which claims the use of a specific compound wherein Y is nitrogen.

It is submitted that the two Groups should be examined together in one Application. That an application contains claims to two or more properly divisible inventive species does not make a requirement for restriction or election proper when is present a properly allowable linking claim is present. A requirement for restriction or election is not proper when there is present a properly allowable linking claim generically covering, via a Markush Group, these individual species. There is no

rejection as to the linking claim, particularly claim 1. This linking claim makes these species inseparable from each other and thus links these inventions which may be otherwise divisible.

As set forth in 809.03 MPEP, a linking claims is:

“(A) genus claims linking species claims”

It is apparent from the Examiner’s Office Action that there are linking claims linking Groups I and II together. In fact claim 1 presents a properly allowable linking claim generically covering, via a Markush Group, the individual species used in the process of both Groups. Please note that claim 1 and 2 are present in both of these Groups. When there are such generic linking claims, MPEP 809.03, requires that the:

“Examiners should use Form Paragraph 8.12 to make restrictions involving linking claims.”

“Claim [1] link(s) inventions [2] and [3]. The restriction requirement [4] the linked inventions is **subject to** the nonallowance of the linking claim(s), claim [5]. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application.”

Please note that under MPEP 809.04, once the linking claim is allowed, the restriction requirement should be canceled. Therefore, Applicant is allowed to present linking claims in conjunction with claims directed to these species.

Based upon the foregoing, it is submitted that the Restriction Requirement, with respect to Groups I and II be withdrawn, unless there is a rejection of the linking claims which appear in both of these Groups. Therefore, claims 1 and 2 should be examined on their merits.

Correspondence and Fees

No fees are believed to be necessitated by the instant response. However, should this be in error, authorization is hereby given to charge Deposit Account no. 03-3839 for any underpayment, or to credit any overpayments.

Please address all correspondence to Intellectual Property Docket Administrator, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, One Riverfront Plaza, Newark, NJ 07102-5497. Telephone calls should be made to William H. Epstein at (973) 596-4607 and fax communications should be sent directly to him at (973) 639-6397.

Respectfully submitted,



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